

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CIT Bank, N.A.,

Plaintiff,

-against-

MEMORANDUM & ORDER
14-CV-6610 (JS) (ARL)

ANTHONY BUONO, MARY ELLEN BUONO,
CAPITAL ONE BANK,

Defendants.

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APPEARANCES

For Plaintiff:

Allison J. Schoenthal, Esq.
Allison M. Funk, Esq.
Nicole E. Schiavo, Esq.
Priya Swaminathan, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Steven Rosenfeld, Esq.
Gross Polowy LLC
1775 Wehrle Dr., Suite 100
Williamsville, NY 14221

For Defendants:

Anthony and
Mary Ellen Buono

Michal Falkowski, Esq.
Paykin, Richland & Falkowski, P.C.
350 5th Avenue, 59th Floor
New York, NY 10118

Capital One Bank

No appearance

SEYBERT, District Judge:

Pending before the Court are (1) plaintiff CIT Bank, N.A.'s ("Plaintiff") motion for a judgement of foreclosure and sale, (Pl.'s Mot., Docket Entry 57), and (2) Magistrate Judge Arlene R. Lindsay's Report and Recommendation ("R&R") recommending

that this Court grant in part and deny in part Plaintiff's motion, (R&R, Docket Entry 62). For the following reasons, the Court ADOPTS Judge Lindsay's R&R in its entirety.

BACKGROUND

On November 10, 2014, Plaintiff commenced this foreclosure action against defendants Anthony Buono and Mary Ellen Buono (together, the "Buonos") and Capital One. (See generally Compl., Docket Entry 1.) The Complaint alleges that in November 2007, the Buonos obtained a mortgage loan in the amount of \$857,500 to purchase the property located at 21 Saints Orchard Road, Belle Terre, New York 11777. (Compl. ¶¶ 1, 11.) The Buonos defaulted on the mortgage loan in April 2014 and failed to cure or make any payments. (Compl. ¶¶ 14-15.) Plaintiff is the assignee and holder of the note and mortgage. (Compl. ¶¶ 2, 13.)¹

As detailed in the Court's April 21, 2016 Electronic Order, the undersigned held a hearing on April 15, 2016, at which the Court granted Plaintiff's motion for summary judgment against the Buonos. (Apr. 2016 Elec. Order.) Additionally, the Court denied without prejudice Plaintiff's requests for judgment in the amount of \$936,665.19 and the appointment of a referee, but granted Plaintiff leave to file a motion that contained support for its

¹ On April 21, 2016, the Court substituted CIT Bank, N.A. as Plaintiff, reflecting Plaintiff's name change from One West Bank, N.A. (formerly known as One West Bank, FSB).

calculation of damages. (Apr. 2016 Elec. Order.) Plaintiff filed its motion on July 24, 2017, (Pl.'s Mot.), and attached a proposed Judgment of Foreclosure and Sale reflecting Plaintiff's desire to have the Court appoint Thomas J. Stock, Esq. as Referee to effectuate sale of the property, (See Proposed J., Rosenfeld Aff. Ex. J, Docket Entry 58-10, at 2). The undersigned referred Plaintiff's motion to Judge Lindsay for an R&R on October 13, 2017. (See Referral Order, Docket Entry 60.)

On February 8, 2018, Judge Lindsay issued her R&R. (R&R.) Judge Lindsay recommended that the Court award Plaintiff a Judgment of Foreclosure and Sale against the Buonos under the supervision of a Referee to be selected by the undersigned, but that the Court deny Plaintiff's request for attorneys' fees and deny Plaintiff's request for statutory costs pursuant to the New York Civil Practice Law and Rules. (R&R at 4-5.) Therefore, Judge Lindsay recommended that the Court enter a Judgment of Foreclosure and Sale reflecting the following amounts:

Principal in the amount of	\$857,500.00
Interest through May 1, 2017 in the amount of	\$200,940.96
Additional daily interest from May 2, 2017 through the date of entry of this Order in the amount of	\$173.85 per day
Additional charges and advances incurred from March 1, 2014 to May 1, 2017 in the amount of	\$32,549.58
Costs in the amount of	\$925.00
For a total of	\$1,091,915.54, plus daily interest of \$173.85 per day from

	May 2, 2017 through the date of entry of this Order
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(R&R at 1, 3-4.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Lindsay's R&R (Docket Entry 62) is ADOPTED in its entirety, and Plaintiff's motion for a Judgment of Foreclosure and Sale (Docket Entry 57) is GRANTED IN PART and DENIED IN PART. The Court will modify and execute the proposed Judgement of Foreclosure

and Sale forthwith, and appoints Thomas J. Stock, Esq., 88 2nd Street, Mineola, New York 11501 to serve as Referee.

Plaintiff is directed to promptly serve Defendants with a copy of this Memorandum and Order and file proof of service on the docket. Upon entry of the Judgment of Foreclosure and Sale, the Clerk of the Court is directed to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 31, 2018
Central Islip, New York